

14 February 1851. 14 VICT.



(Ireland.)

A

B I L L

TO

Extend the Jurisdiction and improve the Practice
of Her Majesty's Court of Prerogative in
Ireland.

[Note.—The Words and Clauses printed in *Italics* are proposed to
be inserted in Committee.]

WHEREAS by an Act of Parliament passed in the Eighth Year of the Reign of His Majesty King George the Fourth, intituled "An Act to provide for the Payment of a Salary ^{7 & 8 G. 4. c. 44.}
" (in lieu of Fees) to the Judge of the Prerogative Court and Court of
5 " Faculties in Ireland," it was enacted, that from and after the passing
of the said Act the Office of Judge or Commissary of His Majesty's
Court of Prerogative for Causes Ecclesiastical, and the Office of
Commissary of His Majesty's Court of Faculties, in and throughout
that Part of the United Kingdom called Ireland, and both which
10 Offices are in the said Act expressed to have been then held and
enjoyed by the then present Judge or Commissary thereof, should
from thenceforth for ever continue to be jointly held and enjoyed by
One Person, and should from Time to Time for ever be granted and
held as One Office, and that the Person holding the said Office
46. A should

should be styled the Judge or Commissary of His Majesty's Court of Prerogative for Causes Ecclesiastical and Court of Faculties in and throughout Ireland: And whereas the said Offices are, in pursuance of the Provisions of the said Act, now held as One Office by One and the same Person; and it is expedient that the Jurisdiction of the said Court of Prerogative should be extended, and the Practice and Procedure therein improved, and that the Office of Judge of said Court of Prerogative and Commissary of said Court of Faculties should be held by different Persons: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Commencement of this Act all the said recited Provisions of the said Act of the Eighth Year of King George the Fourth shall be and the same are hereby repealed; provided that the Right of the present Holder of the said Offices to the Proportion of Salary which shall then be due and payable to him under the Provisions of the said Act shall not be in anywise impaired or prejudiced.

From and after Commencement of Act the Courts of Prerogative and of Faculties in Ireland respectively to be separated. Repeal of Provisions of recited Act

Her Majesty's Court of Prerogative for Causes Ecclesiastical in Ireland to be styled Her Majesty's Court of Probate in Ireland.

II. And be it enacted, That from and after the Commencement of this Act the Court styled at the passing thereof " Her Majesty's Court of Prerogative for Causes Ecclesiastical in Ireland " shall be styled " Her Majesty's Court of Probate in Ireland," and that the Judge thereof shall be styled " The Judge of Her Majesty's Court of Probate in Ireland;" and that from and after the Commencement of this Act the Right to appoint a Commissary of the said Court of Faculties shall belong to and be exercised as heretofore.

Present Judge of Court of Prerogative to be First Judge of Court under Act.

Judge to receive 3,600*l* per Annum by way of Salary.

III. And be it enacted, That the Right Honourable Richard Keatinge, the present Judge of Her Majesty's Court of Prerogative for Causes Ecclesiastical and Court of Faculties in and throughout Ireland shall be the Judge of Her Majesty's Court of Probate in Ireland under this Act; and that the said Right Honourable Richard Keatinge and his Successors in the Office of Judge of the said Court shall receive, in lieu of all Fees or Emoluments, by way of Salary an annual Sum of Three thousand Pounds, to be paid out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of Great Britain and Ireland; and the said Sum of Money to be issued in pursuance of this Act shall from Time to Time thenceforth be payable and paid quarterly, free and clear of all Taxes and Deductions whatsoever, on the Tenth Day of January, the Tenth Day of April, the Tenth Day of July, and the Tenth Day of October in each and every Year, the first Payment thereof to be made on the Tenth Day of January One thousand eight hundred and fifty-one.

IV. And

IV. And be it enacted, That the Judge of the said Court shall not practise or be capable of practising as a Barrister or Advocate in any Court or Place, or in conveyancing or giving Opinions, or in any other Manner whatsoever as a Barrister or Advocate, nor shall he be capable of sitting in Parliament.

Judge incapable of practising as Barrister, &c. or of sitting in Parliament.

V. And be it enacted, That the Judge of the said Court appointed by or under and in pursuance of this Act shall, before he shall be capable of acting in the Execution of any of the Powers and Authorities given him by virtue of this Act, take an Oath in the Presence of the Lord Chancellor to the Effect following; (that is to say,)

Oath of Judge.

‘ I A. B. do swear, That I will faithfully, honestly, and impartially, according to the best of my Skill and Knowledge, execute the several Duties and Powers reposed in me as Judge of Her Majesty’s Court of Probate in Ireland, and that without Favour or Affection, Prejudice or Malice. So help me GOD.’

VI. And be it enacted, That in the event of any Vacancy which may occur in the Office of Judge of the said Court by the Demise, Resignation, or otherwise of the said Right Honourable Richard Keatinge, and on every successive Vacancy, it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of Ireland, to appoint a fit and proper Person, being a Barrister, to be Judge of the said Court.

On Vacancy in Office of Judge of the said Court, Her Majesty to appoint a Successor.

VII. And be it enacted, That the Judge of the said Court shall hold his Office during good Behaviour, and shall not be removable therefrom otherwise than in like Manner as a Judge of any of Her Majesty’s Superior Courts of Law in Ireland.

Judge to hold Office during good Behaviour.

VIII. And be it enacted, That the Office of Judge of the said Court shall be exercised in Person and not by Deputy.

Office of Judge to be exercised in Person.

IX. And be it enacted, That it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of Ireland, to give and grant an Annuity not exceeding the yearly Sum of Two thousand Pounds to any Person who shall have executed the Office of Judge of the said Court, and shall have resigned the same, to be paid quarterly, and to be charged upon and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, such Annuity to commence from the Time at which such Judge of the said Court shall have resigned his said Office, and to continue thenceforth during the natural Life of the Grantee of such Annuity: Provided always, that no such Annuity shall be granted unless either the Grantee shall have been Judge of the said Court during at least Fifteen Years, or unless such Person shall be afflicted with some permanent Infirmary disabling

Power to grant Retiring Allowance to Judge.

disabling him from the due Execution of his said Office, which shall be expressly recited in the Grant: Provided also, that if the Grantee of any such Annuity shall hold any other Office of Profit under Her Majesty, he shall be entitled to receive so much only of the said Annuity as together with the Salary and Profits of such other Office shall not exceed the Sum of Two thousand Pounds.

All existing
Offices, save
that of Judge,
abolished.

X. And be it enacted, That from and after the Commencement of this Act all existing Offices in the said Court, save that of Judge, shall be and the same are hereby abolished, and shall then cease and determine, without Prejudice nevertheless to the Rights and Remedies of the present Holder of any of the said Offices to receive or recover any Money which shall or may then be due or payable to him by virtue of his Office for Fees or otherwise.

Officers in
the Court.

XI. And be it enacted, That there shall be for the Court Two Registrars, One Keeper of the Record, and One Chief Clerk, who, subject to the Provisions of this Act and to any Order of the Court to be made thereunder, shall respectively exercise as near as may be the same Functions in the Court under this Act as the like Officers have hitherto exercised in Her Majesty's Court of Prerogative for Causes Ecclesiastical in Ireland, and such other Functions as the Judge of the Court, with the Approbation of the Lord Chancellor, shall direct, and who shall respectively hold their Offices during good Behaviour, and who shall or may be removed therefrom by the Judge of the Court, with the Consent and Approbation of the Lord Chancellor, for such Misconduct or other Cause as shall be sufficient to warrant such Removal; and every Order for the Removal of any of the aforesaid Officers shall be entered in the Records of the Court, and the same shall be signified to the Lord Lieutenant or other Chief Governor of Ireland for the Time being.

Persons
named in
Schedule
(B.) to be
first Holders
of Offices.
Lord Lie-
utenant to
appoint to
Vacancies.

XII. And be it enacted, That the several Persons in that Behalf named in the Schedule to this Act annexed, shall be the first Holders under this Act of the Offices set opposite their Names respectively; and that whenever and so soon as a Vacancy shall occur in any Office in said Schedule mentioned, whether by the Death, Resignation, Removal, or otherwise of the Person holding the same, it shall be lawful for the Lord Lieutenant or other Chief Governor of Ireland for the Time being to appoint some fit and proper Person to supply such Vacancy.

Registrar to
be a Barrister
or Solicitor.

XIII. Provided always, and be it enacted, That on such Vacancy as aforesaid no Person shall be appointed to the Office of Registrar unless he shall be a Barrister or Solicitor.

XIV. And

XIV. And be it enacted, That in addition to the Execution of all other Duties appertaining to his Office, One of the Registrars, or an Assistant Registrar, if such Officer shall be appointed, shall tax all Bills of Costs, Charges, and Disbursements in relation to the Business of the Court, or in relation to any Appeal therefrom, and which may by any General Order to be made in pursuance of this Act, or by any Order to be made in any Cause depending in the Court, be referred to him, subject to Review of the Court, and the Manner in which such Taxation shall be conducted shall be such as shall be specified by any such Order; and in all Matters relating to any Taxation it shall be lawful for the Registrar or Assistant Registrar, if such Officer shall be appointed, to administer Oaths or Affirmations; and all Persons who shall take any false Oath or Affirmation before the Registrar or Assistant Registrar, shall be liable to all the Penalties, Punishments, and Consequences which attach at Law for any wilful and corrupt false swearing or Perjury.

Assistant Registrar to tax Costs.

XV. And be it enacted, That each of the Officers of the Court shall, before he shall be capable of acting in the Execution of the Duties of his Office, take an Oath in the Presence of the Judge of the Court to the Effect following; that is to say,

Oath of Officers.

‘ I A. B. do swear, that I will faithfully, honestly, and impartially, to the best of my Skill and Knowledge, execute the Duties of my Office as [describing it], and that without Favour or Affection.
‘ So help me GOD.’

XVI. And be it enacted, That there shall be paid as herein-after provided, and in lieu of all Fees and Emoluments, to each of the Officers of the Court specified in the Schedule hereunto annexed the Sums respectively set opposite to their Names in said Schedule.

Salaries payable to Officers in Court.

XVII. And be it enacted, That all Statutes now in force whereby any Duty is imposed on the Registrar or other proper Officer of each Court in Ireland hitherto exercising the Jurisdiction by this Act vested in the said Court of Probate, of making Returns to the Stamp Office with respect to the Personal Estate of deceased Persons, shall apply to the Registrars of the Court appointed under this Act.

Leave now in force relating to present Registrars extended to Registrars under this Act.

XVIII. And be it enacted, That it shall and may be lawful for the Judge of the said Court, and he is hereby required, within the Space of *One Month* from the Commencement of this Act, subject to the Approval of the Lord Chancellor, to make such Rules as he shall think proper for the Regulation of the Fees, Charges, and Emoluments to be made under this Act, and from Time to Time to alter the same, and to cause to be prepared a Table or Tables setting forth

Judge to prepare a Table of Fees to be allowed on Taxation.

what Fees and Allowances and Charges it may be reasonable and proper for the Registrar or Assistant Registrar to allow in his Taxation of Costs in relation to the Business of the said Court, or any Appeal arising therefrom; and also from Time to Time to vary such Table or Tables, and to make such Rules as appear to him proper to regulate the Principles upon which such Taxation shall in future be conducted, and that all such Fees, Allowances, and Charges shall be payable in British Currency.

Power to Lord Lieutenant to appoint Assistant Registrar.

XIX. And be it enacted, That the Lord Lieutenant or other Chief Governor of Ireland shall appoint an Assistant Registrar of 10 the Court, if the Appointment of such Officer shall be found necessary for carrying on the Business of the said Court; and that such Officer shall receive such Salary as the Commissioners of Her Majesty's Treasury shall direct; and that such Officer shall be removable as the other Officers appointed by this Act. 15

Existing Fees abolished, and certain Documents specified in Schedule to be stamped in lieu of Fees.

XX. And be it enacted, That from and after the Commence- ment of this Act it shall not be lawful for any Officer in the said Court of Prerogative, save as is herein-after specially provided, to demand or receive any Fees on account of the Office of Judge or Office of Regis- 20 trar, or any other Office whatsoever, from any Suitor in the said Court, all such Fees being hereby abolished; and in lieu of all such Fees, every Document enumerated in the Schedule to this Act annexed shall, from and after the Commencement of this Act, be written upon Vellum, Parchment, or Paper bearing the Stamp Duty set opposite to such Documents respectively in such Schedule, and having the 25 Words "Prerogative Fund" impressed on every such Stamp: Pro- vided always, that where any such Document shall consist of more than One Sheet, only the first Sheet thereof shall be impressed with such Stamp.

Commissioners of Inland Revenue to give necessary Directions.

XXI. And be it enacted, That the Commissioners of Inland 30 Revenue shall give the necessary Directions for carrying into effect the Provisions of this Act with respect to Stamp Duties in lieu of Fees, and shall cause separate and distinct Accounts to be kept of all Sums of Money collected or received by them under the Provisions of this Act, which Sums of Money they shall pay into the Receipt of Her 35 Majesty's Exchequer; and all such Sums so paid into the Receipt of the said Exchequer shall be carried to and made Part of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Commissioners of Inland Revenue to appoint a fit Discribitor.

XXII. And be it enacted, That it shall be lawful for the Commis- sioners of Inland Revenue to appoint a Person, other than a Clerk, 40 Officer, or Servant of the said Court, and whom the Judge of the said Court

Court shall by Writing under his Hand recommend, to act in the Sale and Distribution of Stamps under this Act within the Precincts of the said Court, for the Convenience of the Suitors therein, and to allow to him such Discount or Poundage as they may deem proper; and it shall be lawful for the said Commissioners to make Regulation for the Allowance of such Stamps issued under the Provisions of this Act as may have been spoiled or rendered useless or unfit for the Purpose intended, or for which the Owner may have no immediate Use, or which through Mistake or Inadvertence may have been improperly or unnecessarily used, and such Allowance shall be made either by giving other Stamps in lieu of the Stamps so allowed, or by repaying the Amount or Value to the Owner or Holder thereof, after deducting the Discount or Poundage allowed on the Sale of Stamps of the like Kind.

XXIII. And be it enacted, That the Provisions contained in the several Acts for the Time being in force relating to Stamps under the Care or Management of the Commissioners of Inland Revenue shall, so far as the same are applicable and consistent with the Provisions of this Act, in all Cases not hereby expressly provided for, be of full Force and Effect with respect to the Stamps to be provided under or by virtue of this Act, and to the Vellum, Parchment, or Paper on which the same shall be impressed, and shall be applied and put in execution for collecting and securing the Sums of Money denoted thereby, and for preventing, detecting, and punishing all Frauds, Forgeries, and other Offences relating thereto, as fully and effectually to all Intents and Purposes as if such Provisions had been herein repeated and specially enacted with reference to the last-mentioned Stamps and Sums of Money respectively.

All Stamp
Laws in
force to
apply.

XXIV. And be it enacted, That no Document which by this Act is required to have a Stamp impressed thereon shall be received or filed or be used in relation to any Proceeding in the Court, or be of any Validity for any Purpose whatever, unless or until the same shall have a Stamp impressed thereon: Provided always, that if at any Time it shall appear that any such Document which ought to have had a Stamp impressed thereon has through Mistake or Inadvertence been received or filed or used without having such Stamp, it shall be lawful for the Court, if it think fit, to order that such Stamp shall be impressed thereon, and thereupon, when a Stamp shall have been impressed on such Document in compliance with such Order, such Document, and every Proceeding in reference thereto, shall be as valid and effectual as if such Stamp had been impressed thereon in the first instance.

No Document to be received unless stamped.
Previous.

Salaries charged on Consolidated Fund, and Proportion of Salaries to be paid in case of Disease, Removal, or Resignation.

XXV. And be it enacted, That all Salaries payable under or by virtue of this Act to the several Officers in that Behalf named shall be charged upon and shall be payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and shall be payable quarterly on every Tenth Day of January, Tenth Day of 5 April, Tenth Day of July, and Tenth Day of October in each and every Year, the first Payment to be made on the Tenth Day of January One thousand eight hundred and fifty-two; and if any Person for the Time being holding an Office under this Act shall 10 die, resign, or be removed from the same, the Executor or Administrator of the Person so dying, or the Person so resigning or being removed, shall be entitled to receive such proportionable Part of his Salary as shall have accrued during the Time that such Person shall have executed his Office since the last Payment.

Treasury on Certificate of Judge to pay incidental Expenses of Court.

XXVI. And towards providing for the necessary incidental Expenses in the said Court, be it enacted, That the Commissioners of Her Majesty's Treasury shall pay, at such Time and in such Manner as they shall think proper, to the Registrars of the said Court, such Sum as shall in each and every Quarter be certified in Writing under the Hand of the Judge of the said Court to have been incurred as and for 20 the Remuneration of the Scrivenery Clerks in the said Court, and for the Expenses of Coals, Candles, Stationery, and other incidental Matters, including therein the Remuneration of a Crier; and every such Certificate shall be given on an Examination on Oath of One of the Registrars of the said Court, and of such other Person or Persons as 25 such Judge shall require to be produced for the Purpose.

Officers of Court prohibited from holding other Offices and from receiving Gratuities in respect of their Services.

XXVII. And be it enacted, That it shall not be lawful for any Officer, Clerk, or Servant appointed by this Act, or who after the passing of this Act shall be appointed to any Office, Place, or Employment in the said Court, to hold or exercise the Duties of any other 30 Office, Place, or Employment whatsoever, or to derive any Emolument or Profit of or in respect of or in connexion with the Business of the said Office, Place, or Employment, either by Gratuity or Fee, or by the Sale or Distribution of Stamps or Parchments or Paper, or otherwise howsoever, other than the Salaries or Allowances provided 35 or authorized by this Act.

Power to Registrars to employ Writing Clerks.

XXVIII. And be it enacted, That it shall and may be lawful for the Registrars of the said Court, and they are hereby required, to employ a sufficient Number of Writing Clerks, who shall be respectively paid according to the Quantity of their Writing, at a Rate 40 not exceeding Three Halfpences per Office Sheet of Ninety Words, such

such Payment to be charged in the incidental Expenses of the said Court, as herein-before provided.

XXIX. And whereas it is expedient that proper Means should be provided for the Transaction of ministerial Duties appertaining to the said Court of Probate: Be it enacted, That it shall and may be lawful for the Judge of the said Court, and he is hereby authorized and required, by Writing under his Hand, to appoint a sufficient Number of fit and proper Persons in and throughout Ireland, who shall be styled Commissioners of the said Court, who shall receive, within the Districts to be mentioned in the Commission appointing them, all Affidavits and Oaths in reference to the Business of the said Court, and who shall perform such ministerial Duties as may be assigned to them from Time to Time by any General Order to be made by the said Court, and who shall be entitled to receive such Fees and for such Duties as may be specified by any General Order as aforesaid.

Power to Judge to appoint Commissioners of Affidavits.

XXX. And be it enacted, That from and after the Commencement of this Act all Jurisdiction hitherto vested in any Ecclesiastical Court, or other Tribunal or Person, in Ireland, appertaining to the granting Probates of the Wills of deceased Persons, and of granting Letters of Administration with or without the Will annexed of the same, shall cease and determine, and the said Jurisdiction shall, by force of this Act, be transferred to and vested in and be thenceforward exercised by Her Majesty's Court of Probate in Ireland.

Jurisdiction vested in any Ecclesiastical Court in Ireland in respect to testamentary Causes abolished.

XXXI. And be it enacted, That all Suits, whether original or by way of Appeal, which shall at the Time of the Commencement of this Act be depending in any Diocesan, Consistorial, or other inferior Ecclesiastical Court in Ireland, or in Her Majesty's said Court of Prerogative for Causes Ecclesiastical, so far as the same arise out of the Jurisdiction proposed by the said Courts respectively in the granting of Probates or of Letters of Administration, be transferred, with all Proceedings therein and arising out of the same, to Her Majesty's said Court of Probate in Ireland, and decided according to the Practice of the same as settled under this Act, or by any General Order to be made thereunder, or according to the Law relating to the same at the passing of this Act, as to the Judge shall seem fit.

Practice as to pending Suits and Appeals.

XXXII. And be it enacted, That the Judges, Registrars, or other Officers of all Ecclesiastical Courts in Ireland by which Probates of Wills, Codicils, or testamentary Papers, or Administration of the Goods and Chattels of any Person deceased, shall have been granted, or any Jurisdiction in that Behalf shall have been exercised, having the Custody of the Documents and Papers appertaining to such

Registrars of Court to obtain Custody of all Papers belonging to Courts the Jurisdiction of which is abolished.

Courts respectively, shall, within *Three Months* from and after the passing of this Act, transmit to the Registrars of Her Majesty's said Court of Prerogative in Ireland such original Wills, Codicils, or testamentary Papers as have been proved in said Courts respectively, and such Administration Bonds, Court Books, and Calendars relating exclusively to testamentary Matters, and all other Documents appertaining to the Jurisdiction hitherto vested in the said Courts, and the same, in like Manner as all other Records of the said Court of Probate shall be preserved by the Registrars of the said Court, under the Superintendence and Control of the Judge of the said Court, and in such Place and in such Manner as shall be provided by this Act or any General Order made thereunder.

Saving of voidable and certain other Probates and Letters of Administration.

Præsum.

XXXIII. And be it enacted, That all Probates and Letters of Administration of Personal Estate granted before the passing of this Act which may be void or voidable by reason that the Court from which the same respectively were obtained had not Jurisdiction to grant such Probate or Letters of Administration, shall be and be deemed for all Purposes whatsoever to have been and to be as valid as if the same had been obtained from the Court entitled to grant such Probate of Wills or Letters of Administration of such Personal Estate respectively: Provided always, that any void or voidable Probate or Letters of Administration shall not be made valid by this Act where another Probate of the same Will or other Letters of Administration shall subsequently, but before the passing of this Act, have been granted out of the proper Court, nor where such Probate or Letters of Administration shall have been revoked or determined by any Court of competent Jurisdiction to have been void before the passing of this Act, nor so far as the same respects any Personal Estate which at the passing of this Act shall be in the Possession of any Person who would be entitled thereto if the same Probate or Letters of Administration were not valid; nor shall this Act prejudice or affect any Proceedings pending at the Time of the passing of this Act in which the Validity of any such Probate or Letters of Administration shall be in question between the Person claiming under the same and the Party claiming adversely thereto, and such Probate or Letters of Administration, if the Result of such Proceeding shall be to invalidate the same, shall not be rendered valid by this Act; and if such Proceedings shall abate or become defective by reason of the Death of any Party, any Person who but for this Act would have any Right by reason of the Invalidity of such Probate or Letters of Administration shall retain such Right, provided he shall within Six Calendar Months after the Death of the said Party commence Proceedings for enforcing the same.

XXXIV. And

XXXIV. And be it enacted, That Her Majesty's Court of Probate in Ireland shall have the sole and exclusive Right of granting Probates of the Wills of deceased Persons in and throughout Ireland, and of granting Letters of Administration with or without the Will annexed of the Goods and Chattels of deceased Persons in and throughout Ireland, and of hearing, determining, and making Orders upon all Matters relating to the Jurisdiction in that Behalf appertaining to or conferred on the Court by this Act, as well as any other Jurisdiction which may be vested in the Court under and by virtue of this Act, subject as herein-after provided to an Appeal to the Lord Chancellor of Ireland: Provided always, that if no such Appeal shall be entered as herein-after provided within One Calendar Month from the Date of the Decision, Order, or Decree of the Court, and be thereafter prosecuted within such Time as shall be fixed by any Order of the Lord Chancellor to be made in pursuance of this Act, such Decision, Order, or Decree of the Court shall be final and conclusive to the same Intent as if the same had not been appealed against under the Laws in force before the passing of this Act.

Jurisdiction of Court defined.

XXXV. Provided always, and be it enacted, That Probate of such Wills and Letters of Administration with or without the Will annexed of the Goods and Chattels of such Persons shall be granted by the Court to the same Party or Parties, and shall be of the same Force and Effect, and be binding on the same Persons and to the same Extent, as such Probate or Letters of Administration, whether with or without the Will annexed, would have been if this Act had not passed, and such Probate or Administration had been granted by any Court or Courts whatever exercising Ecclesiastical Jurisdiction in Ireland; and that with respect to the proving all such Wills, and to the granting of Administration, whether with or without the Will annexed, the Court shall proceed according to the present Form of Proceeding, save where such Proceeding would be inconsistent with this Act, or any General Order to be made thereunder.

Probate to be granted.

XXXVI. And be it enacted, That Her Majesty's Court of Probate shall be a Court of Record, and shall cause to be sealed with the Seal of the said Court as herein-after provided all such Probates, Letters of Administration, Documents, and Copies of the same as are by this Act required to be so sealed, or which the said Court shall at any Time direct, and shall have all the Powers, Incidents, Rights, and Privileges of a Court of Record, in as full and ample a Manner, and to all Intents and Purposes, as the same are used and enjoyed by any of Her Majesty's Superior Courts at Dublin.

Court of Probate to be a Court of Record, with all the Incidents and Powers of same.

Place of
holding
Court.

XXXVII. And be it enacted, That all Proceedings and Matters to be heard by the said Court of Probate shall be heard and determined by the Court at the Place called and known as the "Prerogative Court," situate in Henrietta Street in the City of Dublin, unless the said Judge shall at any Time, with the Consent and Approbation of the Lord Chancellor, see Cause to fix its Sittings in any other Place, and shall appoint the same accordingly, which he is hereby empowered, with the Consent and Approbation as aforesaid, to do.

Seal to be
provided for
Court.

XXXVIII. And be it enacted, That a Seal shall be provided and kept for the said Court, and such Seal shall be impressed with the 10 Words "The Seal of Her Majesty's Court of Probate in Ireland," and which Seal shall be in the Custody of the Registrars of the said Court; and all Courts, Judges, Justices, and other Persons whomsoever shall take notice of the said Seal, and receive Impressions thereof in Evidence as Impressions under the Great Seal of Ireland are received in 15 Evidence, and shall also take notice of and receive in Evidence, without further Proof, all and every of such Probates, Letters of Administration, Documents, and Writings whatsoever as shall purport or appear to be sealed or stamped with the Seal of the said Court, in like Manner as if the same had been sealed with the 20 Great Seal.

Copies
sealed.

XXXIX. And be it enacted, That every Document sealed with the said Seal, and purporting to be attested by the proper Officer of the said Court in that Behalf, and purporting to be a Copy of any Probate, Letters of Administration, or Document of any other Description filed 25 or of Record in the Court, other than an original Will, shall be deemed to be a true Copy of such Probate, Letters of Administration, or other Document, and shall, without further Proof, be admissible and received in Evidence before and by all Courts, Judges, and Justices, and other Persons whomsoever, in like Manner and to the same 30 Extent and Effect as the original Probate, Letters of Administration, or other Document might be admissible or received if tendered in Evidence.

Office Copies
of Wills Evi-
dence in cer-
tain Cases.

XL. And be it enacted, That in all Proceedings before any Court of Justice for all Purposes whatsoever an Office Copy of any Will 35 lodged in the said Court shall, upon such Office Copy being proved in like Manner as an Office Copy of any other Record, be received and taken as Evidence of the Contents of the said original Will of which it purports to be an Office Copy, without producing the said original Will: Provided always, that the Party producing such Copy 40 shall, if out of Dublin Ten Days, and if in Dublin Eight Days, before producing

producing the same give Notice in Writing to the adverse Party thereof, and provided also, that such adverse Party shall not within *Four Days* after receiving such Notice demand by a counter Notice that the Original shall be produced, and in every Case in
 5 which such Counter Notice shall be given the Costs of producing the original Will shall be paid by either Party in the Discretion of the Court in which such Proceeding shall take place as the Taxing Officer of such Court may determine.

XLII. And be it enacted, That if any Person shall counterfeit
 10 the Seal of the Court, or shall alter any Seal so as to resemble the same, or shall knowingly tender in Evidence any Impression of any counterfeited Seal, or shall forge or alter any Writ or Record appertaining to the Court, or shall tender in Evidence any such forged
 15 Writ or Record, then and in every such Case every Person so offending, and every Person knowingly abetting any Person committing any such Offence, and being thereof lawfully convicted, shall be adjudged guilty of Felony.

XLIII. And be it enacted, That from and after the Commencement of this Act all Witnesses in the Court shall be examined *vivâ voce*,
 20 unless as herein-after provided, and Notes of such Evidence shall be taken down in Writing by the Judge or one of the Registrars, or by such other Person and in such Manner as the Judge shall direct, and that the Rules of Evidence in the Court shall be governed by the Principles of Evidence prevailing in the Superior Courts of Common
 25 Law in Ireland.

XLIII. And be it enacted, That in any contested Suit wherein a Party shall have appeared to any Citation it shall be lawful for the Person citing such Party, and who shall be called the Petitioner, to present a Petition addressed to the Judge of the Court, in which he
 30 shall state concisely such Facts and Circumstances as may be necessary to support the Relief he may require; and every such Petition shall be duly verified by such Petitioner, or in his Absence in such Manner as the Judge shall direct, and a Copy of same shall be duly served upon the Person or Persons appearing to such Citation in such
 35 Manner as the Court shall by any General Order to be made under the Provisions of this Act direct.

XLIV. And be it enacted, That the Person so served, or such other Person as to the Court shall seem fit, and who shall be called the Respondent, may, within a Time to be limited for the Purpose by
 40 a General Order of the Court, file an Affidavit, setting forth any Case
 46. D relied

Penalty for counterfeiting Seal of Court.

Examination of Witnesses.

Petitions to be presented to Judge of the Court stating Facts necessary to support Relief sought.

Respondent may file Affidavits.

relied on as Ground against the granting of the Prayer of such Petition.

After Affidavit filed Cause to be deemed as at Issue.

XLV. And be it enacted, That within *One Week* after such Affidavit shall have been filed the Cause shall be deemed at Issue, and that thereupon it shall be lawful for the Court upon special Motion to give Directions as to all further Proceedings in the said Suit, and as to the final Hearing thereof.

Leave may be given to exhibit personal Interrogatories.

XLVI. And be it enacted, That in the Interval between the Day of giving such Directions and that fixed for the Hearing of the Cause it shall be lawful for any Party in the Cause to apply by special Motion to the Court for Leave to exhibit personal Interrogatories to the opposite Party, and a Copy of which personal Interrogatories shall be served upon such Party at the Time of giving such Notice of Motion, and the said Court shall thereon make such Order as it shall deem fit.

15

Power to Court to compel Attendance of Witnesses and Production of Papers.

XLVII. And be it enacted, That it shall be lawful for the said Court to require the Attendance of any Witnesses, and the Production of any Deeds, Evidences, Books, or Writings, by Writ to be issued by the said Court in such and the same Form as nearly as may be as that in which a Writ of Subpoena ad testificandum or of Subpoena duces tecum is now issued by Her Majesty's Court of Queen's Bench at Dublin, and that every Person disobeying any such Writ so to be issued by the said Court shall be considered as in Contempt, and may be punished for such Contempt in the said Court.

Power to Court to direct Issue to a Jury to be tried before Judge of Court or before Judge of Assize.

XLVIII. And be it enacted, That in any contested Suit depending in the said Court the said Court shall have Power, if it shall think fit so to do, to direct a Trial by Jury of any Issue on any Question of Fact arising in any such Suit; and that the Substance and Form of such Issue shall be specified by the Judge of the said Court at the Time of directing the same, and that he shall have Power to settle the same; and such Trial shall be had before the Judge of the said Court, or before some Judge of Assize at Nisi Prius as to the said Court shall seem fit; and in any Case where the Trial of such Issue shall have been directed to be had before the Judge of the said Court, it shall be lawful for the said Court to issue Process to compel the Attendance of Jurors and Witnesses, and to that End exercise all the Power vested for such Purpose in any of Her Majesty's Superior Courts of Law at Dublin.

Costs of Issues.

XLIX. And be it enacted, That the Costs of such Issue as aforesaid as the said Court shall under this Act direct shall be paid by such Party

Party or Parties, Person or Persons, and be taxed by the Registrar or Assistant Registrar of the said Court, in such Manner as the Judge shall direct; and that Payment of such Costs shall be enforced in the same Manner as Costs between Party and Party may be enforced under and by virtue of this Act.

L. And be it enacted, That the said Court, upon Application to be made within *One Calendar Month* after the Trial of any such Issue by any Party concerned, may grant and direct One or more new Trials of any such Issue, and may order such new Trial to take place in the Manner herein-before directed with regard to the first Trial of such Issue, and may by Order of the same Court direct such Costs to be paid as to the said Court shall seem fit upon any Application for a new Trial, or upon any new Trial or second or other new Trial, and may direct by whom and to whom, and at what Time and in what Manner, such Costs shall be paid.

Power to grant new Trials.

LL. And be it enacted, That the granting or refusing to grant an Issue, or a new Trial of any such Issue, may be Matter of Appeal within the Provisions of this Act.

Granting or refusing to grant new Trial Matter of Appeal.

LII. And be it enacted, That in any Case where the Trial of any such Issue shall be had before a Judge of Assize the Record of the said Issue and of the Verdict therein shall be transmitted by the Registrar or Clerk of Assize of the Judge before whom the said Issue shall have been tried to the Registrars of the said Court, and the Verdict of the Jury upon any Issues, whether tried before the Judge of the said Court or a Judge of Assize at Nisi Prius, (unless the same shall be set aside,) shall be conclusive upon the said Court and upon all Parties to such Suit, and in all further Proceedings in the Cause in which such Fact is found the said Court shall assume such Fact to be as found by the Jury.

Duty of Clerk of Assize respecting such Issues.

LIII. And be it enacted, That it shall be lawful for the Court in every Suit depending therein, upon the Application of any of the Parties to such Suit, if it shall think fit, to order the Examination on Oath, upon Interrogatories or otherwise, before One of the Registrars of the said Court or other Person to be named in such Order, of any Witnesses within the Jurisdiction of the Court, or to order a Commission to issue for the Examination of Witnesses on Oath at any Place or Places out of such Jurisdiction, by Interrogatories or otherwise, and by the same or any subsequent Order or Orders to give all such Directions touching the Time, Place, and Manner of such Examination, as well within the Jurisdiction of the Court as without, and all other Matters and Circumstances connected

Examination of Witnesses on Oath upon Interrogatories.

connected with such Examinations as may appear reasonable and just.

Power to
command
Attendance
of Witnesses.

LIV. And be it enacted, That when any Rule or Order shall be made for the Examination of Witnesses within the Jurisdiction of the Court it shall be lawful for the Court in and by the first Rule or 5 Order to be made in the Matter, or any subsequent Rule or Order, to command the Attendance of any Person to be named in such Rule or Order for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Rule or Order, and to direct the Attendance of any such Person, to be at his own Place 10 of Abode or elsewhere, if necessary or convenient so to do; and the wilful Disobedience of any such Rule or Order shall be deemed a Contempt of Court, and Proceedings may be thereupon had by Attachment (the Judge's Order being made a Rule of Court before or at the Time of the Application for an Attachment) if, in addition to 15 the Services of the Rule or Order, an Appointment of the Time and Place of Attendance in obedience thereto, signed by the Person or Persons appointed to take the Examination, or by One or more of such Persons, shall be also served, together with or after the Service of such Rule or Order: Provided always, that every Person whose 20 Attendance shall be so required shall be entitled to the like Conduct Money and Payment for Expenses and Loss of Time as upon Attendance at a Trial: Provided also, that no Person shall be compelled to produce under any such Rule or Order any Writing or other Document that he would not be compellable to produce at a Trial before 25 a Jury.

Persons having
Custody
of Prisoners
to bring them
up for Pur-
pose of Exa-
mination.

LV. And be it enacted, That it shall be lawful for any Sheriff, Gaoler, or other Officer having the Custody of any Prisoner to bring up such Prisoner for Examination before the Court, or before any Person in that Behalf authorized, by virtue of a Writ of Habeas 30 corpus ad testificandum to be issued for that Purpose, and which the Court is hereby authorized to issue under such Circumstances, and in such Manner as the Writ of a similar Nature may be issued by any of Her Majesty's Superior Courts of Law in Dublin.

Power to
administer
Oaths or take
Affirmations.

LVI. And be it enacted, That it shall be lawful for all and every 35 Person authorized to take the Examination of Witnesses by any Rule, Order, or Commission made or issued in pursuance of this Act, and he and they are hereby authorized and required to take all such Examinations upon the Oath of the Witnesses, or Affirmation in Cases where Affirmation is allowed by Law instead of Oath to be adminis- 40 tered by the Person so authorized; and if upon such Oath or Affirmation any Person making the same shall wilfully and corruptly give
any

any false Evidence, every Person so offending shall be deemed and taken to be guilty of Perjury, and shall and may be indicted and prosecuted for such Offences in the County wherein such Evidence shall be given, or in the County of Dublin if the Evidence be given
5 out of Ireland.

LVII. And be it enacted, That it shall and may be lawful for the Registrars or any other Persons to be named in any such Rule or Order as aforesaid for taking any Examination in pursuance thereof, and they are hereby required to make, if need be, a special Report to
10 the Court touching such Examination, and the Conduct or Absence of any Witness or other Person thereon or relating thereto, and the Court is hereby authorized to institute such Proceedings and make such Order upon such Report as Justice may require, and as may be instituted and made in any Case of Contempt of the Court.

Special Reports.

LVIII. And be it enacted, That the Costs of every Rule or Order to be made for the Examination of Witnesses under any Commission or otherwise by virtue of this Act, and of the Proceedings thereupon, shall be Costs in the Cause, unless otherwise directed by the Court.

Costs of Examinations, &c.

LIX. And be it enacted, That no Examination or Deposition to
20 be taken by virtue of this Act shall be read in Evidence at any Trial in relation to any Matter arising in any Suit in the Court without the Consent of the Party against whom the same may be offered, unless it shall appear to the Satisfaction of the Judge that the Examinant or Deponent is beyond the Jurisdiction of the Court, or dead, or unable
25 from permanent Infirmary to attend the Trial, in all or any of which Cases the Examinations and Depositions, certified under the Hand of the Registrar, Commissioner, or other Person taking the same, shall and may, without Proof of the Signature to such Certificate, be received and read in Evidence, saving all just Exceptions.

Examinations and Depositions not to be used as Evidence in any Trial without Consent of Party against whom it is offered.

LX. And be it enacted, That the Court, except on the Trial of any Issue, may, where it shall think fit, receive in Evidence Affidavits, such Affidavits to be made before any Person empowered under the Provisions of this Act to take same.

Court may proceed on Affidavit.

LXI. And be it enacted, That any Affidavit, Affirmation, or Declaration to be sworn or made or taken and read or used in the said
35 Court shall or may be sworn, made, or taken by or before either of the Registrars of the said Court, or the Registrar or Assistant Registrar for the Time being, or before any Commissioner appointed by the Judge of the said Court, under the Authorities conferred in that
40 Behalf by this Act, or before any Person specially authorized by

Before whom Affidavit may be sworn.

said Judge to take the same, who are hereby respectively authorized and required (except on Sunday, Good Friday, and Christmas Day) to administer, receive, or take the necessary and proper Oath, Affirmation, or Declaration as aforesaid; and every Person who shall wilfully and corruptly swear, affirm, or declare falsely in any such Affidavit, Affirmation, or Declaration shall be guilty of Perjury, and shall be prosecuted and punished accordingly.

Costs of Proceedings. LXII. And be it enacted, That the Costs of all Proceedings in the Court shall be in the Discretion of the Court, and all Costs (when taxed by the proper Officer appointed for the Purpose under this Act) shall be recovered in like Manner and by the like Process, as near as can be, as Costs ordered to be paid by any Party under any Order or Decree made in a Suit depending in the Court of Chancery.

Decrees to have same Effect as Decrees of Court of Chancery. LXIII. And be it enacted, That, subject to the Provisions of an Act passed in the Thirteenth Year of Her Majesty's Reign, intituled "An Act to amend the Law concerning Judgments in Ireland," any Decree or Order of the Court of Prerogative, whereby any Sum of Money, or any Costs, Charges, or Expenses, shall be payable to any Person shall have the like Effect, and be attended with the like Remedies, as is or are given to any Decree or Order of the Court of Chancery in that respect by an Act passed in the Fourth Year of Her Majesty's Reign, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for the farther Amendment of the Law, and the better Advancement of Justice, in Ireland;" and that all the Provisions of an Act passed in the Eighth Year of Her Majesty, intituled "An Act for the Protection of Purchasers against Judgments, Crown Debts, Lis Pendens, and Commissions of Bankruptcy, and for providing One Office for the registering of all Judgments in Ireland, and for amending the Laws in Ireland respecting Bankruptcy and the Limitation of Actions," with respect to the Registration of such Decree or Order, shall apply to any Decree or Order as aforesaid of the Court of Probate. 35

Court to approve of Form of Writs LXIV. And be it enacted, That it shall be lawful for the Judge of the said Court from Time to Time to settle and approve of the Form of any Writ or Writs which may be deemed necessary to be issued for the Purpose of giving effect to any Description of Order, Proceeding, or Matter of or pending in the said Court, or for the Furtherance of the Business relating to or originating in the said Court, of all and every of which Writs, when so settled, every of Her Majesty's Courts

Courts of Common Law, and all other Courts, Judges, and Officers, and others, shall take cognizance of and give effect thereto in such Manner as may be requisite.

- LXV. And whereas by certain Acts of Parliament now in force in Ireland Provision is made for enabling Parties in Suits relating to the granting of Probates and Letters of Administration in said Court of Prerogative to appeal to Her Majesty in Her Court of Chancery, who hath heretofore delegated Authority in that Behalf to certain Commissioners, called the High Court of Delegates: And whereas it is expedient that a fixed Tribunal should be constituted for the hearing of such Appeals: Be it enacted, That from and after the Commencement of this Act, there shall be constituted a Court to be called "Her Majesty's Court of Appeal in Ireland," and which Court is hereby constituted, and which shall consist of the Lord Chancellor or First Lord Commissioner for the Custody of the Great Seal of Ireland for the Time being, and of the Fourth Justice of Her Majesty's Court of Queen's Bench, the Fourth Justice of Her Majesty's Court of Common Pleas, and the Fourth Baron of Her Majesty's Court of Exchequer, respectively, who shall be styled Judges of Her Majesty's Court of Appeal in Ireland; and that all such Appeals, together with any Appeals which any Party is entitled to make under the Provisions of this Act, shall be made to the Court of Appeal in such Manner, and subject to such Rules, and upon such Security, if any, as the said Court of Appeal shall from Time to Time direct; and that the said Court of Appeal shall thereupon have Power to proceed to hear and determine every such Appeal, and to make such Judgment, Order, and Decree in the Matter of such Appeal as might heretofore have been made by the High Court of Delegates if this Act had not been passed; and that every such Judgment, Order, and Decree so to be made by the said Court of Appeal shall have the like Force and Effect in all respects whatsoever as the same respectively would have had if made and pronounced by the aforesaid High Court of Delegates; and that every such Judgment, Order, and Decree shall be final and conclusive, and that no Commission shall hereafter be granted or authorized to review any Judgment or Decree to be made upon Appeal by virtue of this Act: Provided always, that no such Appeal shall be heard unless in the Presence of Three Judges at least of the Court of Appeal; and that on any such Appeal the Notes of Evidence taken as hereinbefore provided by or under the Direction of the Judge shall be certified by the said Judge to the Lord Chancellor, and shall be admitted to prove the oral Evidence given in the said Court of Appeal, and that no Evidence shall be admitted on such Appeal
- Appeals to
the Lord
Chancellor.
46. to

to contradict the Notes and Evidence so taken and certified as aforesaid; but this Proviso shall not enure to prevent the Lord Chancellor, upon remitting the Matter the Subject of such Appeal as herein-after provided, from directing Witnesses to be examined and re-examined upon such Matters as is herein-after provided. 5

Not to affect
Appeals now
pending.

LXVI. Provided always, and be it enacted, That nothing herein contained shall extend to affect any Appeal now pending, or which before the Commencement of this Act may be pending, to Her Majesty in Chancery by virtue of the said Acts, or to affect the Right of Her Majesty to grant any such Commission under the 10 Great Seal, to hear and adjudicate upon any Appeal so now pending; and that every Judgment or Decree of the High Court of Delegates already made or hereafter to be made in any Cause so now pending, or which shall be so pending as aforesaid, shall have the like Force and Effect in all respects as if this 15 Act had not been passed.

Court of
Appeal to
be a Court
of Record.

LXVII. And be it enacted, That Her Majesty's Court of Appeal in Ireland shall be a Court of Record, and shall have all the Powers of and incident thereto, and adjourn any Sitting from Time to Time and for such Time as may be requisite and consistent with the due 20 and prompt Administration of Justice.

Regulating
Manner of
making
Appeals.

LXVIII. And be it enacted, That it shall be lawful for the Court of Appeal from Time to Time to make such General Orders as may be necessary for regulating the Course of Procedure in respect to Appeals under this Act, and from Time to Time to vary or rescind 25 such General Orders; and it shall be lawful for the Court of Appeal, upon any Appeal, to remit the Matter which shall be the Subject of such Appeal to the said Court of Probate, and at the same Time to direct that the said Court shall re-hear such Matter in such Form, and either generally or upon certain Points only, and upon such Re- 30 hearing re-examine such Witnesses and take such additional Evidence though before rejected, or reject such Evidence before admitted, as the Court of Appeal shall direct; and further, on any such remitting or otherwise, it shall be lawful for the Court of Appeal to direct an Issue to be tried in reference to any Fact arising in said Appeal, or 35 to direct a new Trial, either generally or upon certain Points only.

Costs of
Appeals.

LXIX. And be it enacted, That the Costs incurred in the Prosecution of any Appeal to the Court of Appeal, and of such Issues as the said Court shall direct, shall be paid by such Party as the said Court shall direct, and the same shall be taxed by the Registrar or 40 Assistant Registrar of the Court of Probate, who for that Purpose shall

shall be deemed an Officer of the Court of Appeal; and said Costs, when so taxed and certified, shall be enforceable by the same Means as any Costs by the said Court of Probate, and the Order or Decree for Payment of the same shall have the like Effect and Operation at Law, and shall be registered in the same Manner, as any Order or Decree for Costs made by the said Court of Probate.

LXX. And be it enacted, That all Appeals to the Court of Appeal under the Provisions of this Act, and all Affidavits and Documents to be used on the hearing of any such Appeal, shall be entered in the Office of the Lord Chancellor's Secretary, who in that Behalf shall be an Officer of the Court of Appeal, and the Court of Appeal shall on the hearing of such Appeals be attended by One of the Registrars of the Court of Probate.

LXXI. And be it enacted, That when Probate of any Will or Letters of Administration with or without the Will annexed shall have been obtained in common Form out of the Court, it shall not be lawful for any Person, without the special Order of the Court, to institute a Suit for the revoking or recalling of such Probate or Letters of Administration, unless within Six Years from the Time when the same shall have passed the Seal of the Court: Provided always, that if any Person entitled to institute such Suit shall be at the Time of the obtaining of such Probate or Letters of Administration adversely to him within the Age of Twenty-one Years, Feme Covert, Non compos mentis, or beyond the Seas, then such Person shall be at liberty to institute such Suit within the like Period from after the ceasing of such Disabilities.

LXXII. And be it enacted, That the said Court of Probate, and the Court of Appeal respectively aforesaid, shall have and enjoy in all respects such and the same Powers of enforcing Judgments, Decrees, and Orders as are now exercised by the High Court of Chancery (and both in personam and in rem,) or as are given to any Court Ecclesiastical by an Act passed in a Session of Parliament of the Second and Third Years of the Reign of Her Majesty, intituled "An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland;" and that all such Powers as are given to Courts Ecclesiastical of punishing Contempts or of compelling Appearances, and of enforcing Decrees and Orders, shall be exercised by the Court of Probate and the Court of Appeal, in such and the same Manner as the Powers in and by such Act given, and shall be of as much Force and Effect as if the same had been thereby expressly given to the said Court.

Officers to
execute their
Duties in
Person, ex-
cept in cer-
tain Cases.

LXXIII. And be it enacted, That every Officer of the Court shall execute the Duty of his Office in Person: Provided always, that in case of Illness, or for any other reasonable Cause to be allowed by the Judge, it shall be lawful for such Officer to appoint a Deputy, to be first approved of by the Judge, and no such Deputy shall act for 5 any longer Time than shall be allowed and specified by the Order approving of such Deputy; and that in case any Officer of the Court who shall be prevented by Illness from giving his personal Attendance shall omit for the Space of Two Days to appoint such Deputy, the Judge shall, if he shall see fit, himself appoint such Deputy, 10 and direct what Part of the Salary of such Officer shall be received by such Deputy, and the same shall be paid over by such Officer to such Deputy.

Judge may
alter Practice
of his Court.

LXXIV. And be it enacted, That it shall be lawful for the Judge of the said Court from Time to Time to make such Alterations 15 in the Practice of the said Court, and also such Orders as he shall think fit in and respecting the Pleadings and Procedure in the said Court, as may be conducive to the due Administration of Justice, and from Time to Time to rescind or vary such Alterations or Orders: Provided always, that no such Orders or Alterations therein 20 shall be contrary to or inconsistent with the Provisions of this Act.

Officers not
to practise as
Barristers.

LXXV. And be it enacted, That every Person hereby appointed or who shall at any Time after the passing of this Act be appointed to be an Officer or Clerk of or in the Court shall be and is hereby declared to be incapable of practising as a Barrister or as an Attorney 25 or Solicitor, or as Agent or Clerk of any Attorney or Solicitor, in the said Court of Probate in Ireland, or in any Court of Law or Equity in Ireland, either separately or in partnership with any other, or in the Name of any other Person or Persons, during such Time as such Person shall hold any Office or Employment to which he shall 30 have been appointed under the Provisions of this Act; and if any Officer or Clerk shall so practise as Barrister, Solicitor, Attorney, Agent, or Clerk while he shall hold the Office or Employment to which he shall have been appointed, contrary to the Intent and Meaning of this Act, such Circumstance shall be sufficient to warrant the 35 Judge of the said Court to exercise in respect of such Officer the Power of Removal from such Office.

Compensa-
tion to Per-
sons whose
Offices are
abolished.

LXXVI. And be it enacted, That every Person holding any Office in the said Court of Prerogative which may be abolished by this Act, and every Person holding Office in any of the Courts whose Jurisdiction by this Act is abolished, and whose Emoluments may be thereby 40 diminished, shall be entitled to make a Claim for Compensation to the
Com-

Commissioners of Her Majesty's Treasury within Six Calendar Months from the Commencement of this Act; and it shall be lawful for the said Commissioners of Her Majesty's Treasury, by Oath or otherwise, and in such Manner as they shall think fit, to inquire into the Nature of the Office, and what was the Tenure, and what were the lawful Emoluments, in respect of which Compensation shall be claimed; and the said Commissioners of Her Majesty's Treasury in such Inquiry shall have regard to the Fact whether any Office in respect of which a Claim as aforesaid has been made shall have been exercised jointly or by Deputy, in which Case any joint Holder of the Office or the Person performing the Duties of an Office by Deputy shall be entitled to make Claim only in respect of the Emoluments actually received by him under and by virtue of any Arrangement entered into with the other joint Holder or the Deputy, as the Case may be; and the Commissioners in each Case shall award such Compensation, if any, as they shall think fit; and all such Compensation shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: Provided always, that if any Person entitled under this Enactment to make such Claim as aforesaid shall by virtue of this Act or otherwise be appointed to a public Office, the Payment of the Compensation awarded to him under this Act, so long as he shall continue to receive the Salary of such Office or Employment, shall be suspended if the Amount of such Salary or Emolument be greater than the Amount of such Compensation; and if any such Person shall by virtue of this Act or otherwise be appointed to a public Office or Employment, the Salary or Emoluments of which may be less than the Amount of such Compensation, such Person shall be entitled to receive the Difference existing between the Amount of such Salary and the Amount of such Compensation, and no more: Provided also, that an Account of all such Compensations shall, within Fourteen Days next after the same shall be so granted, be laid upon the Table of the House of Commons if Parliament be then assembled, or if Parliament be not then assembled, then within Fourteen Days after the Meeting of the Parliament then next assembled.

- 35 LXXVII. And be it enacted, That from and after the Commencement of this Act the Right possessed or claimed by Doctors of Law, admitted Advocates, or by Proctors, of exclusively practising, appearing in, and conducting Suits in the said Court, shall cease and determine, and the same shall be abolished, and thenceforward it shall be lawful for all Suitors in the Court to appear, prosecute, and defend their Suits therein by themselves, their Counsel and Attornies: Provided always, that nothing herein contained shall prejudice or affect the Right of any Proctor practising in the said Court to maintain any Action for or to demand any Costs due to him in relation

Rights of exclusive Practice in the Court to cease.

Act not to prejudice Right of Proctors to bring Actions

for Costs
due.

relation to any Business transacted by him in the Court before the Commencement of this Act.

Persons pro-
fessing
Roman
Catholic Re-
ligion not
disqualified
for Office.

LXXXVIII. And be it enacted, That no Person, if otherwise duly qualified in that Behalf under the Provisions of this Act, shall be disqualified from holding the Office of Judge, Registrar, or Assistant Registrar in the Court, or from filling any other Office or Employment therein, or from pleading and practising as Counsel or Attorney therein as herein-after provided, by reason of his professing the Roman Catholic Religion, or being a Dissenter from the Church by Law established in Ireland.

10

Proctors of
Ecclesiasti-
cal Courts
admitted
Attornies
of Probate
Court.

LXXIX. And be it enacted, That every Person who shall at the Time of the Commencement of this Act be admitted a Proctor of Her Majesty's Court of Prerogative for Causes Ecclesiastical in Ireland shall, by virtue of his Admission and of this Act, be admitted and become an Attorney of the said Court of Probate, and shall also, by virtue of his Admission and of this Act, be admitted and become an Attorney of each of Her Majesty's Courts of Common Law in Ireland, and a Solicitor of Her Majesty's High Court of Chancery in Ireland; and every Person who shall be serving an Apprenticeship under Articles of Clerkship to any such Proctor shall, when the Period of Five Years from the Commencement of his Apprenticeship shall have elapsed, and upon the Payment of the necessary Stamp Duty, be likewise entitled to all the Privileges conferred by this Act on such Proctor, and shall accordingly, by virtue of his having entered into such Articles of Clerkship, and of his having paid the proper Stamp Duty in reference thereto, be admitted and become an Attorney of the aforesaid Courts respectively and a Solicitor of Her Majesty's Court of Chancery in Ireland.

Oaths to be
taken before
proceeding in
Prerogative
Court.

LXXX. Provided always, and be it enacted, That before any Proctor or any Apprentice to a Proctor shall be admitted to practise as an Attorney or Solicitor in any of the aforesaid Courts, he shall take the usual Oaths as administered to Persons seeking to be admitted Attornies or Solicitors of the said Courts respectively, but no such Proctor or Apprentice to a Proctor shall be liable to pay any Stamp Duty or Court Fees in relation to such Admission; and every such Proctor or Apprentice to a Proctor, on taking the prescribed Oaths, and signing the Roll of Attornies or Solicitors in each of the said Courts, shall be entitled to all the Privileges and be subject to all the Liabilities of an Attorney or Solicitor belonging to the Court into which he shall have been admitted.

40

LXXXI. And

LXXXI. And be it enacted, That every Person who shall at the Time of the Commencement of this Act be admitted an Attorney of any of Her Majesty's Superior Courts of Common Law in Ireland shall, by virtue of his Admission and of this Act, become and be an Attorney of the said Court of Probate; and every Person thereafter to be admitted a Solicitor of the said Court of Chancery shall be also admitted and become an Attorney of said Court of Probate; and every Attorney by virtue of this Act admitted to practise in said Court of Probate shall by force thereof be entitled to perform such Services as before the Commencement of this Act had been performed by any Proctor in said Court.

Attornies of Superior Courts admitted Attornies of Probate Court.

LXXXII. And be it enacted, That every Person by this Act rendered eligible to be admitted and become an Attorney of the said Court of Probate shall, previous to his Admission, take the following

Oath to be taken by Persons admitted to practise in Probate Court.

Oath before the Judge of the said Court; (that is to say,)
' I A.B. do swear, That I will faithfully and diligently transact and perform such Business as may be intrusted to me as an Attorney of Her Majesty's Court of Probate in Ireland, and I will not permit my Name to be used by any qualified or unqualified Person as an Attorney in any Proceeding in the said Court; and that in all respects I will render Obedience to such Rules as may be made regarding the Attornies of the said Court by the Judge thereof; and that I will to the utmost of my Power aid in the Preservation of the Records of the said Court.

' So help me GOD.'

LXXXIII. And be it enacted, That in case any Person not being qualified according to the Provisions of this Act to practise as an Attorney of the said Court of Probate shall practise in any Proceedings depending therein, or arising out of the Jurisdiction of the said Court, every such Person shall be deemed guilty of a Contempt of Court, and shall be liable to all the Penalties consequent thereon; and that all the Laws and Statutes in force at the Time of the Commencement of this Act concerning Attornies and Solicitors shall extend, so far as the same may be applicable, to Attornies practising in the said Court of Probate.

Penalty for unqualified Persons practising.

LXXXIV. And be it enacted, That all Probates, Letters of Administration, Writs, and Process of any Nature whatever issuing under the Seal or by the Authority of the Court shall be in the Name of Her Majesty.

Form of Probates, Letters of Administration, &c.

LXXXV. And be it declared and enacted, That no Action shall lie against the Judge of the said Court of Probate for Error in Judgment, and that the said Judge shall be entitled to and have all

Judge of Probate Court entitled to the same Privileges

leges as
Judges of
Superior
Courts.

Privileges and Protections in his Jurisdiction which by Law appertain to the Judges of Her Majesty's Superior Courts of Common Law in the Exercise of their several Jurisdictions.

Bonds.

LXXXVI. And be it enacted, That in any Case wherein, according to any Statute or Usage in that Behalf, any Bond is required to be executed by any Person obtaining Letters of Administration to a deceased Person, by any Court exercising Jurisdiction in that respect, the same shall be entered into by Recognizance to Her Majesty, which shall be enforced and sued on as Recognizances entered into the Superior Courts.

Commence-
ment of Act.

LXXXVII. And be it enacted, That, save where herein otherwise provided, this Act shall commence and take effect on the *Tenth Day of October One thousand eight hundred and fifty-one.*

Schedule to
be deemed
Part of Act.

LXXXVIII. And be it enacted, That the Schedules to this Act annexed shall be deemed and taken to be Part of this Act.

Title of Act.

LXXXIX. And be it enacted, That in citing this Act in other Acts of Parliament, and in legal or other Instruments and Proceedings, it shall be sufficient to use the Expression "The Court of Probate (Ireland) Act, 1851."

Construction
of Terms.

XC. And be it enacted, That the Words and Expressions herein after mentioned shall in this Act be interpreted as follows; (that is to say,) "Her Majesty" shall mean and include the Heirs and Successors of Her Majesty; and the Words "Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the Custody of the Great Seal of Ireland; and the Words "the Court" shall mean and include Her Majesty's Court of Probate in Ireland, and the Judge of the said Court or Deputy appointed to the same; and the Words "the Judge" shall include the Deputy to such Judge; and every Word importing the Singular Number only shall extend to several Persons or Things as well as to one Person or Thing; and every Word importing the Plural Number shall extend and be applied to one Person or Thing as well as to several Persons or Things; and every Word importing the Masculine Gender shall extend and be applied to a Female as well as a Male.

Act not to
extend to
England or
Scotland.

XCI. And be it enacted, That this Act shall not extend to either England or Scotland.

SCHEDULE (A.)

						Comp. Duty in lieu of Fee.		
						£	s.	d.
Every Petition	-	-	-	-	-	0	5	0
Every Probate or Administration	-	-	-	-	-	1	0	0
Every Administration Bond	-	-	-	-	-	0	5	0
Every Custody	-	-	-	-	-	0	5	0
Every Renunciation	-	-	-	-	-	0	5	0
Every Jury Hearing	-	-	-	-	-	3	0	0
Every special Case	-	-	-	-	-	1	0	0
Every Search	-	-	-	-	-	0	2	6
Every Affidavit	-	-	-	-	-	0	1	0
Every Copy of Document filed in Office, per Folio of 50 Words	-	-	-	-	-	0	0	3
Every Citation or other Process under Seal of Court	-	-	-	-	-	0	2	6
Every Appearance	-	-	-	-	-	0	2	6
Every Final Order	-	-	-	-	-	0	10	0
Every Copy of same	-	-	-	-	-	0	3	0
Every Interlocutory Order	-	-	-	-	-	0	4	0
Every Copy of same	-	-	-	-	-	0	2	0
Every Commission under Seal of Court	-	-	-	-	-	1	0	0
Every Certificate by the Assistant Registrar for any Costs, Charges, or Disbursements, where such Bill of Costs shall not exceed £1.	-	-	-	-	-	0	1	6
Exceeding £1, and not exceeding £10.	-	-	-	-	-	0	2	6
“ £10. “ “ £20.	-	-	-	-	-	0	5	0
“ £20. “ “ £30.	-	-	-	-	-	0	7	6
“ £30. “ “ £40.	-	-	-	-	-	0	10	0
“ £40. “ “ £50.	-	-	-	-	-	0	15	0
“ £50. “ “ £100.	-	-	-	-	-	1	0	0
“ £100. “ “ £200.	-	-	-	-	-	1	10	0
Over £200.	-	-	-	-	-	2	0	0

SCHEDULE (B.)

Maurice Keatinge and Anthony John Hawkins	} Registrars of the Court	-	-	-	£ 1,500
Richard Smith, Keeper of the Records		-	-	-	350
Alexander Maskey, Chief Clerk		-	-	-	350

Prerogative Court.

(Ireland.)

A

B I L L

To extend the Jurisdiction and improve
the Practice of Her Majesty's Court
of Prerogative in Ireland.

*(Proposed and brought in by
Mr. Keogh and Mr. Stobbs.)*

*Ordered, by The House of Commons, to be Printed,
14 February 1831.*

40.

Under 4. 02.